

R162-2f-401c. Additional Provisions Applicable to Brokers.

- (1) A principal broker shall:
- (a) strictly comply with the record retention and maintenance requirements of Subsection R162-2f-401k;
 - (b) provide to the person whom the principal broker represents in a real estate transaction:
 - (i) a detailed statement showing the current status of a transaction upon the earlier of:
 - (A) the expiration of 30 days after an offer has been made and accepted; or
 - (B) a buyer or seller making a demand for such statement; and
 - (ii) an updated transaction status statement at 30-day intervals thereafter until the transaction either closes or fails;
 - (c)(i) regardless of who closes a real estate transaction, ensure that final settlement statements are reviewed for content and accuracy at or before the time of closing by:
 - (A) the principal broker;
 - (B) an associate broker or branch broker affiliated with the principal broker; or
 - (C) the sales agent who is:
 - (I) affiliated with the principal broker; and
 - (II) representing the principal in the transaction; and
 - (ii) ensure the principals in each closed real estate transaction receive copies of each ~~[all]~~ document[s] executed in the transaction closing;
 - (d) in order to assign all or part of the principal broker's compensation to an associate broker or sales agent in accordance with Section 61-2f-305, provide written instructions to the title insurance agent that include the following:
 - (i) an identification of the property involved in the real estate transaction;
 - (ii) an identification of the principal broker and sales agent or associate broker who will receive compensation in accordance with the written instructions;
 - (iii) a designation of the amount of compensation that will be received by both the principal broker and the sales agent or associate broker;
 - (iv) a prohibition against alteration of the written instructions by anyone other than the principal broker; and
 - (v) additional instructions at the discretion of the principal broker;
 - (e) obtain written consent from both the buyer and the seller before retaining any portion of an earnest money deposit being held by the principal broker;
 - ~~[-] (f) exercise active supervision over the conduct of all licensees and unlicensed staff employed by or affiliated with the principal broker, whether acting as:~~
 - ~~(i) the principal broker for an entity; or~~
 - ~~(ii) a branch broker;~~
 - ~~(f)(g)~~ strictly adhere to the rules governing real estate auctions, as outlined in Section R162-2f-401i;
 - ~~(g)(h)~~ strictly adhere to the rules governing property management, as outlined in Section R162-2f-401j;
 - ~~(h)(i)~~ except as provided in ~~[this]~~ Subsection ~~(1)(h)(iii), (1)(i)(iii),~~ within three business days of receiving a client's money in a real estate transaction, deposit the client's money into a trust account:
 - (A) maintained by the principal broker pursuant to Section R162-2f-403; or
 - (B) if the parties to the transaction agree in writing, maintained by:
 - (I) a title company pursuant to Section 31A-23a-406; or
 - (II) another authorized escrow entity; and
 - (ii) within three business days of receiving money from a client or a tenant in a property management transaction, deposit the money into a trust account maintained by the principal broker pursuant to Section R162-2f-403 or forward or deposit client or tenant money into an account maintained by the property owner;
 - (iii) a principal broker is not required to comply with ~~[this]~~ Subsection ~~(1)(h)(i) or (ii) (1)(i)(i) or (ii)~~ if:
 - (A) the contract or other written agreement states that the money is to be:
 - (I) held for a specific length of time; or
 - (II) as to a real estate transaction, deposited upon acceptance by the seller; or
 - (B) as to a real estate transaction, the Real Estate Purchase Contract or other written agreement states that a promissory note may be tendered in lieu of good funds and the promissory note:
 - (I) names the seller as payee; and
 - (II) is retained in the principal broker's file until closing;
 - ~~(i)(j)~~ (i) maintain at the principal business location a complete record of any ~~[all]~~ consideration received or escrowed for real estate and property management transactions; and
 - (ii) be personally responsible at all times for deposits held in the principal broker's trust account;
 - ~~(j)(4)~~ (i)(A)(I) in a real estate transaction, assign a consecutive, sequential number to each offer; and
 - (II) assign a unique identification to each property management client; and
 - (B) include the transaction number or client identification, as applicable, on:
 - (I) trust account deposit records; and
 - (II) trust account checks or other equivalent records evidencing the transfer of trust funds;
 - (ii) maintain a separate transaction file for each offer in a real estate transaction, including a rejected offer, that involves funds tendered through the brokerage and deposited into a trust account;

(iii) maintain a separate transaction file for each offer in a real estate transaction, including a rejected offer, that involves funds tendered through the brokerage and deposited into a trust account;

(iv)~~(iii)~~ maintain a record of each rejected offer in a real estate transaction that does not involve funds deposited to trust:

(A) in separate files; or

(B) in a single file holding any ~~all~~ such offer[s]; and

(k)~~(4)~~ if the principal broker assigns an affiliated associate broker or branch broker to assist the principal broker in accomplishing the affirmative duties outlined in ~~this~~ Subsection (1):

(i) actively supervise any such associate broker or branch broker; and

(ii) remain personally responsible and accountable for adequate supervision of each licensee ~~all licensees~~ and unlicensed staff affiliated with the principal broker.

(2) A branch broker shall:

(a) exercise active supervision over the conduct of each licensee ~~all licensees~~ and unlicensed staff employed by or affiliated with the branch or branches supervised by the branch broker; and

(b) be personally responsible and accountable for any other responsibility and duty ~~all other responsibilities and duties~~ assigned to the branch broker by the principal broker and accepted by the branch broker.

(3) Neither a principal broker nor a branch broker shall be deemed in violation of failing to exercise active and reasonable supervision ~~Subsections (1)(f) and (2)~~ where:

(a) an affiliated licensee or unlicensed staff member violates a provision of Title 61, Chapter 2f et seq. or the rules promulgated thereunder;

(b) the supervising broker had in place at the time of the violation specific written policies or instructions to prevent such a violation;

(c) reasonable procedures were established by the broker to ensure that licensees receive adequate supervision and the broker has followed those procedures;

(d) upon learning of the violation, the broker attempted to prevent or mitigate the damage;

(e) the broker did not participate in the violation;

(f) the broker did not ratify the violation; and

(g) the broker did not attempt to avoid learning of the violation.